
(2006) 08 AHC CK 0279
In the Allahabad High Court

Pushkar Nath Tripathi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 6 AWC 6054 : (2006) 2 RD 675

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Shri K.K. Tripathi, learned Counsel for the petitioner.

2. This writ petition is directed against the order dated 9.9.1999 passed by the District Magistrate, District Mirzapur, on the representation filed by the petitioner rejecting his claim for appointment on the post of Collection Amin pursuant to the Government order dated 4.6.1975.

3. In brief the case of the petitioner is that he was engaged as an officiating Consolidation Lekhpal in the Consolidation Department from 1.7.1981 to 21.10.1984 and thereafter his services came to an end. Claiming benefit on the basis of Government Order dated 4.6.1975 he sought appointment against a vacancy of Collection Amin etc or in the office of the Collector, Mirzapur, treating him as a retrenched employee but no heed was paid, thus he approached this Court in writ petition No. 2612 of 1993 which was disposed of by order dated 25.11.1997 with following directions:

Heard learned Counsel for the parties.

The order dated 2.5.1997 is recalled. The respondents are directed to consider the case of the petitioner for appointment as Collection Amin, if there is any vacancy to the said post.

With these observations, this writ petition is disposed of.

4. Pursuant to the aforesaid order the case of the petitioner was considered by the Collector, Mirzapur but he rejected his claim by the impugned order.

5. At the outset learned Counsel for the petitioner could not dispute the fact that the Collector has not committed any error in rejecting contention of the petitioner for appointment pursuant to the Consolidation Department's circular dated 4.6.1975 since it was applicable only in respect to certain specified category of the employees of Consolidation Department whose services were dispensed with upto 4.6.1975. Further, the aforesaid circular was applicable in respect to only such Lekhpal who were retrenched pursuant to the circular dated 4.6.1975. Admittedly the petitioner was not retrenched pursuant to circular dated 4.6.1975 and therefore the same is inapplicable to his case.

6. He however contended that in view of the subsequent Government Orders dated 23.5.1981 and 21.7.1984 the petitioner is entitled to be treated as a "retrenched employee" and therefore ought to have been considered for employment against an existing post as a "retrenched employee".

7. The short question needs to be considered in this case is whether the petitioner is a "retrenched employee" as defined in the Government Order dated 23.5.1981 read with 21.7.1984.

8. A copy of the Government Order dated 3.5.1981 is on record at page No. 49 wherein the term "retrenched employee" has been defined as follows:

NVuh fd;k x;k deZpkjh* dk rkRi;Z ml O;fDr ls gS tks jkT;iky ds fu;e cukus ds fu;a=.k ds fdlh lsok esa ;k in ij ekSfyd] LFkkukiUu vFkok LFkk;h :i ls fu;ksftr Fkk vkSj ftlus de ls de 3 ekl dh fujUrj lsok dh gks ijUrj dqy feykdj ;g QqVdj [kf.Mr lsok Hkh ,d o"kZ dh iwjh gks xbZ gk vkSj ftldh lsok;sa v/khuLFk dk;kZy; fyfid oxZ ?lh/kh HkrhZ? ?prqFkZ la"kks/ku? fu;ekoyh] 1979 rFkk prqFkZ oxZ deZpkjh lsok ?r`rh; la"kks/ku? fu;ekoyh] 1979 ds izHkkoh gksus ds iwoZ ;k i"pkr vf/k"Bku esa deh ds dkj.k lekIr dj nh xbZ gks ;k lekIr dj nh tk;s vkSj ftlds IEcu/k esa IEcu fu;qfDr izkf/kdkjh }kjk NVuh fd;k x;k deZpkjh gksus dk izek.k i= tkjh fd;k x;k gks] fdUrj mlesa ,slk O;fDr lfeefyr ugha gksxk ftls rnFkZ vk/kkj ij fu;qDr fd;k x;k gksA*

;g fd m?iz? dysD"ku vehuksa dh lsok ?pkSFkk la"kks/ku? fu;ekoyh] 1984 dk u;k fu;e 32 bl izdkj izfrLFkkfir fd;k x;k gS 32&O;ko`fRr bl fu;ekoyh dh fdlh ckr dk dksbZ izHkko ,slh fj;k;rksa ij ugha iM+sxk ftldk bl laca/k esa ljdkj }kjk le; & le; ij tkjh fd;s x;s vkns"kkksa ds vuqlkj NVuh fd;s x;s deZpkfj;ksa dh Js.kh ds vH;fFkZ;ksa ds fy;s mica/k fd;k tkuk visf{kr gksA

Li"Vhdj.k& IEcu) lsok ;k in ij iz;ksT; HkrhZ fu;ekoyh ;k vkns"ksa esa fofgr izfdz;k ds vuqlkj fu;qDr O;fDr dks rnFkZ vk/kkj ij fu;qDr fd;k x;k ugha le>k tk;sxkA

9. The Government order dated 21.7.1984 while extending the period for re-employment/absorption of the retrenched employee has retained all other terms and conditions as contained in the Government Order dated 23.5.1981 and states as under:

mi;qZDr fo"k;d lela[d vkns"k fnukad 23 ebZ] 1981 esa iznRr lqfo/kkvksa dh vof/k 22 ebZ 1984 dks lekIr gks xBZ gSA "kklu dh tkudkjh esa ;g vk;k gS fd dfri; foHkkxksa ds NVuh"kqnk deZpkfj;ksa dks [kikus dh leL;k vHkh Hkh fo|eku gSaA vr% bl fo"k; ij leqfpr fopkjksijkuR ;g fu.kZ; fy;k x;k gS fd NVuh"kqnk deZpkfj;ksa dks] jkT;k/khu dk;kZy;ksa esa vizkfof/kd rFkk yksd lsok vk;ksx dh ifjf/k ds ckgj ds inksa ij gksus okyh fjfDr;ksa esa [kikus ds fy;s] mDr "kklukns"k fnukad 23 ebZ] 1981 esa iznRr lqfo/kk;sa 23 ebZ] 1984 ls rhu o"kZ ds fy;s vFkkZr 22 ebZ] 1987 rd ds fy;s vkSj ekU; jgsxA

10. A perusal of the definition of "retrenched employee" shows that a person must have been appointed in substantive, officiating or permanent basis and worked continuously at atleast for three months but in case of interrupted service must have completed one year, terminated as a result of reduction in the establishment and a certificate has been issued to this effect by the appointing authority but not a person appointed on ad-hoc basis.

11. The terms substantive, officiating and permanent therefore have to be construed in contradiction to the term "ad-hoc". The explanation contained in the aforesaid Government Order makes it clear that a person who is not appointed in accordance with the procedure prescribed in the Rules is an "ad-hoc employee" and he would not be considered as a "retrenched employee" under the aforesaid Government Order.

12. The term "officiate" has been defined under Fundamental Rules 9(19) which provides:

Officiate-A Government servant officiates in a post when he performs the duties of a post on which another person holds a lien. The Government may, if they think fit, appoint a Government servant to officiate in a vacant post on which no other Government servant holds a lien.

13. It has also been considered by the Apex Court in Arun Kumar Chatterjee Vs. South Eastern Railway and Others, of the judgment, it was observed -

According to its ordinary connotation, the word "officiating" is generally used when a servant having held one post permanently or substantively, is appointed to a post in a higher rank, but not permanently or substantively, while still retaining his lien on his substantive post i.e. officiating in that post till his confirmation, Such officiating appointment may be made when there is a temporary vacancy in a higher post due to the death or retirement of the incumbent or otherwise. In contrast, the word "temporary" usually denotes a person appointed in the civil service for the first time and the appointment is not permanent but temporary i.e. for the time being, with no right to the post.

14. In the Government order, the term "officiating" has been used along with the words "substantive" and "permanent" and besides, in contradiction to the term "ad-hoc". When a word may have different shades and meanings but used in the company of the words having a particular nature and meaning, such words will

also take its colour from its company. The doctrine of "ejusdem generis" and "noscitur a sociis" will be applicable. The principle underlying "ejusdem generis" is applied when the statutory provision concerned contains an enumeration of specific words, the subject of the enumeration thereby constituting a class or category but which class or category is not exhausted at the same time by the enumeration and the general term follows the enumeration with no specific indication of any different legislative intention. The principle underlying the "noscitur a sociis" is that two or more words susceptible of analogues meaning when are coupled together are to be understood as used in their cognate sense, taking, as if it were, their colour from each other, that is, the more general is to be restricted to a sense analogues to the less general. The Apex Court has Considered the aforesaid two principles in *Municipal Corporation of Greater Bombay Vs. Bharat Petroleum Corporation Ltd.*, *M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad*, and *M.K. Ranganathan and Another Vs. Government of Madras and Others*, Reading the word "officiating" in the light of the above observations as defined under Fundamental Rule 9(19) would mean that if a person is already appointed to a post on regular basis may officiate on a higher post where some person has a lien, but he may also officiate on a post where no person has a lien but before officiation the appointment must be in accordance with Rules. In my view, the word "officiate" in the aforesaid Government order is an appointment made in accordance with Rules after following due procedure, the appointment is though not "substantive" or "permanent" but on "officiating basis", i.e., in the nature of a "temporary appointment" but made in accordance with Rules.

15. It is not the case of the petitioner that he was ever recruited or appointed as Consolidation Lekhpal after following the procedure prescribed under the Rules. Further, there is nothing on record to show that petitioner's services were terminated as a result of reduction of strength in the Department. Therefore, in my view no benefit can be extended to the petitioner pursuant to the Government Order dated 23.5.1981.

16. There is another aspect of the matter, which is fatal to the case. Government Order dated 23.5.1981 does not provide for any employment or absorption of the "retrenched employee" but entitles a "retrenched employee" only relaxation in maximum age limit, educational qualification whenever a recruitment is made. It is apparent from para 3 of the Government Order dated 23.5.1981 which is reproduced as under:

3& ,sls NVuh "kqnk deZpkfj;ksa dks mi;qZDr lqfo/kk ds vUrxZr dsoy fu;fer p;uksa esa vgZrk nsus ds fy;s NwV nh tk;sxh ijUrq mUgsa p;u esa dksbZ izkFkfedrk iznku ugha gksxA

17. Therefore the only benefit derivable from the Government Order is relaxation in maximum age limit and educational qualification but an employee seeking advantage under the aforesaid Government order is not exempted from appearing in the test held for selection. Therefore the basic contention of the;

petitioner for absorption or re-employment on the basis of the Government Order dated 23.5.1981 itself is misconceived and based on a clear misreading of the said order.

18. Lastly the contention of the petitioner that he was employed as Consolidation Lekhpal between 1.7.1981 to 21.10.1984 is factually disputed by the respondents and the documents filed by the petitioner as Annexure Nos. 4 and 5 have been alleged to be forged and fictitious by the respondents. The respondents have categorically stated that there is nothing on record in the office of the Settlement Officer (Consolidation), Varanasi, showing that the petitioner was ever employed in the said office between 21.7.1981 to 21.10.1984. The salary bills of the aforesaid period also do not show that the petitioner was ever paid any salary on the post of Consolidation Lekhpal. Therefore the very basic contention of the petitioner that he was employed as Consolidation Lekhpal has been seriously disputed and the documents filed by the petitioner are assailed claiming forged and fictitious. The respondents have also placed on record a copy of the petitioner's application dated 31.10.1988 (Annexure CA-4 to the counter affidavit) submitted in the office of District Magistrate, Mirzapur for appointment to the post of Collection Amin wherein he has not shown and claimed himself as a retrenched employee. If the petitioner would have been retrenched employee, while seeking employment in the year 1988, it is unbelievable that he would not have disclosed his status as "retrenched employee" to claim benefit under the existing government orders. Non mention of the status of the "retrenched employee" in the said application supports the claim of the respondents that the petitioner was never employed between 1.7.81 to 21.9.1998 and his contention otherwise is not correct. It is relevant to mention at this stage that though the counter affidavit has been served upon the petitioner long back, but he has not chosen to file any rejoinder affidavit and the averments made in the counter affidavit, therefore, have not been disputed. In the absence of any denial to the averments made in the counter affidavit I have no option but to conclude that he was never employed as Consolidation Lekhpal between 21.7.1981 to 21.10.1984 and his claim is false and based on fictitious documents. That being so, the petitioner has not approached this Court with clean hands. Thus also he is not entitled for equitable relief under Article 226 of the Constitution of India.

19. In view of the above discussion, the writ petition fails and is accordingly dismissed.